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10/541,201	11/08/2005	Michael D. McMahon	011525-384	8716
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BAINBRIDGE, ANDREW PHILIP				
ART UNIT		PAPER NUMBER		
3754				
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12/12/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary

Application No.

10/541,201

Applicant(s)

MCMAHON ET AL.

Examiner

ANDREW P. BAINBRIDGE

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1-6, 8-9, 18 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US 2,600,553 (W.T. Lord) in view of US 6,591,874 (Credle, Jr.), US 6,126,129 (Herron), and US 4,269,330 (Johnson).

4. Lord in figures 1-3 teaches a holder with a downwardly sloped bottom 19 with a collapsible container 11 that is squeezed by a roller shaft 23 that rides on two vertical slots 12. Lord lacks teaching that a flexible disposable pouch with a generally rectangular shape the pouch can be filled with edible food and condiments such as ketchup, with a holder that has a slot in the front wall to present the nozzle of the container.

Credle in figures 1-5 discloses a flexible disposable pouch 210 with a generally rectangular shape (see figure 3 and 5) with a dispensing nozzle in a wall (see figure 3 and 5) the pouch containing up to five gallons of syrup (col. 1, lines 25-40), or any variety of corners of the bag (see figures 1-5), or finally the nozzle located at the bottom of the bag between two angled seals (see figure 3). It would be obvious to one of ordinary skill in the art to adapt Credle to Lord because Credle teaches a bag that is ideal for holding viscous fluids in a cheap, versatile bag that allows for a maximum amount of flexibility in use.

Johnson in figures 1-11 teaches a compressible container 20 with a multiple slit valve 44, 46, 48 that contains condiments such as thick sauces for fast food hamburger sandwiches (col. 1, lines 1-30). It would be obvious to one of ordinary skill in the art to adapt Credle with Johnson to create a 1 gallon disposable flexible bag that contains ketchup and other well known fast food hamburger sauces, because fast food condiments are stored in all kinds of containers, including disposable bags.

Herron in figures 1-6 teaches a holder 10 for a collapsible bag 220 with a bottom and sides with a slot in the front that can present a nozzle (see figure 6). It would be obvious to one of ordinary skill in the art to adapt Herron to Credle because Herron teaches a way to present the bag of Credle in a structured holder that would make the utilization of the container that much easier.

It would be obvious to one of ordinary skill in the art to adapt Lord to Credle because Lord teaches a way to squeeze the collapsible bag with the use of a roller, which is a well known and well understood way to effectively dispense a material.

4. **Claim 7 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle and Johnson as applied in claim 1 and further in view of US 4,220,260 (Webster).

5. Lord in view of Herron, Credle and Johnson as applied in claim 1 has all of the elements of claim 7 except for the two ends of the shaft are supported by brackets that ride on the vertical slots, and have a groove between the two vertical sides. Webster in figures 1-5 teaches a bracket 2, 10 that rides on a vertical slot 8 that supports a shaft 3, the bracket having a groove in between the vertical sides 2, 10. It would be obvious to one of ordinary skill in the art to adapt Webster to the Credle-Herron-Lord-Johnson combination because Webster teaches a way to increase the reliability and efficiency of using a winding shaft to dispense material from a disposable bag.

6. **Claims 10-13 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle and Johnson as applied in claim 1 and further in view of US 5,156,295 (Gordon et al.).

7. Lord in view of Herron, Credle and Johnson as applied in claim 1 has all of the elements of claims 10-13 including a plastic intersecting slit valve that only allows dispensation upon a certain level of pressure (Johnson) except for the dispensing nozzle including a flange that is fixed to the condiment container with a spout communicating with the interior of the container that nozzle made of plastic material. Gordon in figures 1-12 teaches an opening for a collapsible bag with a flange 68 with a disposable cap 78 that covers a spout 66 that protrudes from the container. It would be obvious to one of ordinary skill in the art to adapt Gordon to the Lord-Credle-Herron-

Johnson combination because Gordon teaches a well known and reliable way to assure that the nozzle stays located at the cusp of the holder outside of the container.

8. **Claims 14-15, 19 and 23 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle, Johnson and Gordon.

9. Lord, Credle, Herron, and Johnson disclose all of the elements of claims 14-15, 19 and 23 as disclosed above including a peelable spout 50 (Johnson figure 9) except for a flange that is attached to the nozzle and spout that communicates with the interior of the condiment bag and extends to the outside of the bag. Gordon has a flange with a projecting spout that is connected and communicates with the interior of a collapsible bag. It would be obvious to one of ordinary skill in the art to adapt Gordon to the Lord-Credle-Herron-Johnson combination because Gordon teaches a well known and reliable way to assure that the nozzle stays located at the cusp of the holder outside of the container.

10. **Claim 16 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle and Johnson as applied in claim 1 and further in view of US 3,214,064 (A.P. Raiha).

11. Lord in view of Herron, Credle and Johnson as applied in claim 1 has all of the elements of claim 16 except for a pawl that engages a ratchet that allows the shaft to be wound tighter, but to not unwind when the handle is released. Raiha in figures 1-9 teaches a handle 42 attached to a ratchet 32 attached to a pawl 46 that are connected to a squeezable tube. It would be obvious to one of ordinary skill in the art to adapt Raiha to the Credle-Herron-Lord-Johnson combination because Raiha teaches a way to

easily apply a consistent amount of winding and therefore pressure to the container, and also provide a way to assure that the container stays under a certain amount of pressure at all times.

12. **Claim 17 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle, Johnson and Raiha as applied in claim 16 and further in view of Webster.

13. Lord in view of Herron, Credle, Johnson and Raiha as applied in claim 16 has all of the elements of claim 17 except for the shaft rides upon two brackets that ride on the vertical slots that are held in place by a groove between two vertical sides. Webster as taught above has brackets with a groove between two vertical sides that ride on a vertical slot.

14. **Claims 20-22 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle, Johnson and Gordon as applied in claim 19 and further in view of Raiha.

15. Lord in view of Herron, Credle, Johnson and Gordon as applied in claim 19 has all of the elements of claims 20-22 except for a ratchet and pawl system. Raiha as taught above teaches these missing elements.

16. **Claim 25 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle, Johnson and Gordon as applied in claim 19 and further in view of Webster.

17. Lord in view of Herron, Credle, Johnson and Gordon as applied in claim 19 has all of the elements of claim 25 except for a set of brackets that ride on the vertical slots

that have a groove in between two vertical brackets. Webster as taught above has these missing elements..

18. **Claim 26 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Lord in view of Herron, Credle, Johnson, Gordon and Webster as applied in claim 25 and further in view of Raiha.

19. Lord in view of Herron, Credle, Johnson, Gordon and Webster as applied in claim 25 has all of the elements of claim 26 except for a ratchet and pawl system. Raiha as taught above has these missing elements.

Response to Arguments

20. Applicant's arguments with respect to claims 1-23, 25-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./
Examiner, Art Unit 3754

/Frederick C. Nicolas/
Primary Examiner, Art Unit 3754